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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,800	03/22/2004	Arthur Lavorn Carlisle	10152	1058

7590 12/14/2006
Charles R. Sutton
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201 South Lake Ave.
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EXAMINER

JACKSON, BRANDON LEE

ART UNIT PAPER NUMBER

3772

DATE MAILED: 12/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/805,800

Applicant(s)

CARLISLE, ARTHUR LAVORN

Examiner

Brandon Jackson

Art Unit

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03/22/2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 March 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "cervical support having first contour" and the "lumbar support having second contour," as disclosed in claim 8, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Schenck (U.S. Patent 6,848,134). Schenck discloses an orthopedic appliance with removable support pads (column, 1, lines 6-11) comprising a chassis (14), a cervical support (16), a lumbar support (26), a sleeve (10) having an aperture and means for closing said aperture (column 4, line 26-27). The cervical support (16) is disclosed as a headrest pad that provides support for the user's head. While providing support for the user's head, the headrest pad will inherently provide cervical support, because the orthopedic device immobilizes the head (column 3, lines 39-42), if head movement is prevented then neck movement is also prevented. The chassis (14) and support devices (16, 26) all have a separate means (column 4, lines 26-27) for connecting to the sleeve (10). The support devices (16, 26) and chassis (14) are contained within the sleeve (10). Gel packs (column 1, lines 58-61) fit within (column 3, lines 24-29) the lumbar and cervical support pads (16, 26). The gel packs are made of materials that are known to be non-toxic to humans (column 1, lines 60-61). The gel packs are able to receive and hold a thermal charge (column 3, lines 49-51).

Claim Rejections - 35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 5-7, 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schenck (6,848,134) in view of Boone, Jr. et al. (4,979,520). Schenck substantially discloses the invention's claims, see claims 1, 2, and 8 rejections above, however Schenck fails to disclose hook and loop fasteners as a means for closing the aperture; and hook and loop fasteners to attach the support devices to the chassis in order to make the support device detachable. Boone teaches hook and loop fasteners (60, 72) as a means for attaching support devices to an orthopedic device. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have substituted the support devices and chassis attaching means of Schenck for the hook and loop fasteners, as taught by Boone, Jr. because it would allow the orthopedic device to be easily modified for persons of different sizes.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bien (U.S. Patent 2,990,008), Brault et al. (U.S. Patent 4,895,173), Grim (U.S. Patent Document RE35,113), Graham (U.S. Patent 5,713,841), Amioka (U.S. Patent 5,797,153), Navarro (U.S. Patent 6,226,820), Lachenruch (U.S. Patent Application 2003/109816), Keilhauer (U.S. Patent D485,111), Tweardy et al. (U.S. Patent 6,921,376).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brandon Jackson whose telephone number is (571)272-3414. The examiner can normally be reached on Monday - Friday 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571)272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Brandon Jackson
Examiner
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